

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 28, 1996

Suzanne Wierbinski
Chief of Staff for
Honorable Martha M. Escutia
Assemblymember, Fiftieth District
State Capitol, Fourth Floor
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-96-106

Dear Ms. Wierbinski:

This is in response to your request for advice on behalf of Assemblymember Martha M. Escutia regarding provisions of the Political Reform Act (the "Act") regulating the receipt of "gifts" and "contributions."¹

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Will payments received in connection with the Bell High Cluster Parent Involvement Conference be considered reportable gifts or contributions to Assemblymember Escutia.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18995.

2. Does the proposed flyer for the event, prepared with public funds, comply with the restrictions on mass mailing set forth in Section 89001 and Regulation 18901 of the Act?

CONCLUSIONS

1. The payments will not be considered gifts or contributions.

2. Section 89001 and Regulation 18901 specifically permit announcements sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, held by the elected officer, and which the elected officer intends to attend, so long as the announcement does not include the elected officer's photograph or signature and includes only a single reference to the elected officer. The proposed flyer complies with this exception and therefore would not be restricted by Section 89001 or Regulation 18901.

FACTS

Assemblymember Escutia wishes to cosponsor an event with the Bell High School Cluster, Bell High School Title I and Bilingual Programs, Nimitz-Middle School Title VII Program, LAUSD Parent Community Services and others. The program will be an effort to get parents involved in school activities. Speakers will discuss such topics as available community resources, teaching methods, school reform, bilingual education, computers in education, gang prevention, and tax information. There will be displays for neighborhood watch, education vendors, local health agencies, loan and tax assistance, and Department of Motor Vehicle information. The event will be held at Bell High School on April 13, 1996.

In our telephone conversations of March 25, 1996 and March 27, 1996, you stated that the schools will be providing food to the attendees. You also stated that the Assemblymember and the Assemblymember's staff have no involvement in whether food would be provided. The Assemblymember will be sending out flyers for the event paid for with public funds.

DISCUSSION

I. Gifts and Contributions

A. Applicable Law

Generally, a payment received by an officeholder, or made at the behest of an officeholder, is considered a gift or contribution unless the officeholder provides consideration of equal or greater value in exchange for the payment.

For example, a payment received by a candidate is presumed to be a contribution, unless some exception exists. Regulation 18215 defines "contribution" as any payment made for political purposes. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest² of a candidate.
(Regulation 18215(a).)

Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Assemblymember is considered a candidate under Section 82007. Thus, any payments received by a legislator, or made at that legislator's behest is presumed to be for political purposes and will be considered contributions absent an exception. (Danner Advice Letter, No. A-96-039.)

As we discussed, the Act does not prohibit or limit an officeholder's receipt of contributions in connection with governmental events. Contributions must merely be disclosed on the officeholder's periodic reports. Moreover, by concluding a payment received for a governmental event is a "contribution," this does not in any way construe the event to be a "campaign" event for which public funds could not be used pursuant to Section 85300.

Conversely, Regulation 18215(c)(14) expressly provides that "a payment received by, directed by, or made at the behest of a candidate for personal purposes" is not a contribution. However, such payments may be considered gifts. Gifts are subject to a \$280 per single source limit per calendar year. Gifts must also be disclosed.

² A payment is made at the "behest" of a candidate if the payment is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" the candidate. (Regulation 18225.7(a).)

B. Use of the Public School Facilities of One of the Cosponsors

In the Schmidt Advice Letter, No. A-96-075, we stated:

The [event] will be held at a private elementary school. The school will be making its premises available for the event free of charge. According to your facts, the school has a policy of making its facilities available to many community groups without charge. Therefore, the exception for discounts made available to the general public will apply. (Regulation 18215(b)(3).) No contribution will result.

The same conclusion would apply to your event.

C. Speakers

With respect to payments made in connection with the speakers at the event, in the Schmidt Advice Letter, No. A-96-056, we advised that if individuals are volunteering their time, we would not consider such volunteer personal services contributions. (Regulation 18215(c)(2).)

We also concluded that even individuals compensated to speak at the event would not be making contributions to the Assemblymember so long as their involvement was not "campaign" related.³ The event you describe is not a campaign event. Finally, with respect to those presenters, we concluded that since the presentations would be provided primarily to convey information and to assist the officeholder in the performance of her official duties that they were considered "informational material" and not gifts. (Regulation 18942.1.)

These same conclusions would apply to your event. Thus, the Assemblymember incurs no reporting obligations with respect to the payments in connection with speakers.

D. Provision of Food for Program Participants

You stated that one of the cosponsors intends to provide food for the parents that attend the event. You also stated that neither the Assemblymember nor her staff have been involved in this aspect of the planning. We have advised in the past in the

³ "Campaign activities" are delineated in the regulation and include such items as arranging a campaign event, acting in the capacity of the campaign manager or soliciting, receiving or acknowledging contributions. The regulation was meant to address "the issue of unavoidable de minimus campaign-related activity." (May 24, 1979 staff memorandum to the Commission regarding Regulation 18420.)

Schmidt Advice Letter, No. A-96-096, that where a cosponsor handles the specifics concerning certain portions of the event, such as the acquisition of food or other aspects, and this is not performed under the control or at the direction of the elected official, or in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the official, then the payments would not be considered contributions to the official.

However, as we discussed payments may be considered gifts, under some circumstances. Regulation 18941 provides that a gift is "received" or "accepted" when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift. Assuming the Assemblymember will not receive or control the food for the event, the food will not be considered a gift to the Assemblymember. However, as we discussed the amount she actually consumes or any amount she might "receive" will be considered a disclosable gift and may not exceed \$280.

II. Mass Mailings

Section 89001 states that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as two hundred or more substantially similar pieces of mail. (Section 82041.5.) Applied literally, this section would prohibit all mass mailing involving public funds, irrespective of content or purpose, including such items as tax notices, college schedules, sample ballots and other mass mailings sent by government agencies.

Regulation 18901 was adopted to clarify that application of the prohibition is limited to specific types of mailings.⁴ Regulation 18901(a) provides that a mailing is prohibited only if all of the following apply:

(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

⁴ The Commission's authority to interpret Section 89001 to avoid the absurd results of its literal application was upheld in Watson v. Fair Political Practices Com. (1990) 217 Cal.App.3d 1059.

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer;

(3)(A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b);

Regulation 18901(a).

In addition, Regulation 18901 provides a series of limited exceptions to the prohibition. For example, Regulation 18901(b)(9)(A)(1) provides that a mass mailing of the following is not prohibited by Section 89001:

An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.^[5]

(Emphasis added.)

The sample flyer you submitted is consistent with this

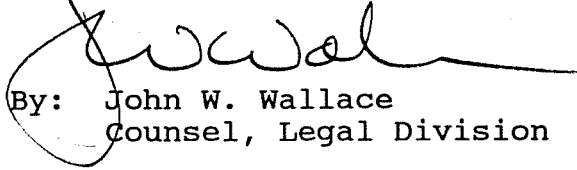
⁵ Any such announcement may not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name, except as otherwise permitted by the regulation. (Regulation 18901(b)(9)(B).)

restriction and thus is not restricted by Section 89001 or Regulation 18901.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "J. Wallace", is written over the typed name and title of John W. Wallace. The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

By: John W. Wallace
Counsel, Legal Division